

Public Comment on Council on Environmental Quality
40 CFR Part 1515
RIN 0331-ZA01
Revision of Freedom of Information Act Regulations

It is encouraging to see that the Council on Environmental Quality is bringing its Freedom of Information Act response practices up to date since promulgated in 1977. There are at least four areas being “updated” that will not enhance the ability of the CEQ to respond to FOIA requests:

1. Section 1515.4(a): The CEQ would like the Chief FOIA Officer to have the option to serve as the Appeals Officer. This is a conflict of interest and should not be put into practice or into the CEQ’s rules.
2. 1515.6. CEQ’s response to a request: The CEQ would like to use a complicated formula of tolling as a mechanism to delay timely response. This should not be put into practice or into the CEQ’s rules.
3. 1515.10. Obtaining available information: The CEQ would like to withhold information until payment is made. This restricts the Freedom of Information Act to only those who can pay or are members of a privileged group(s). With the decline of traditional media, more citizens (industry and public) are going to have to personally avail of the FOIA process to find out about information that is rightly in the public domain or should be for our democracy to work properly. This section should be re-evaluated.
4. 1515.12. Fees in general; 1515.13 Fees for categories of requesters; and 1515.14 Other Charges: The nation is in a deep recession. CEQ provides zero justification for increasing copying fees 50%. This should not be put into practice and, unless the CEQ can provide a cost analysis for the current \$.10 per page, it would be more appropriate to charge government rates rather than commercial rates (i.e. no more than \$.05 per page). It is at the government discretion to determine whether a request is by a “commercial use requester” or the information is really for the benefit of the general public (see point 3 above). In addition, this is an onerous burden for small businesses, many of whom are affected by the decision making or coordination role of the CEQ. The CEQ should reduce copying fees and re-evaluate how to pass on the agency’s cost for complying with FOIA in a manner that ensures transparency and the flow of information from the government to the citizens, be they industry, non-profits and educational institutions, media, or the general public. It is understandable that CEQ does not want to divert resources to responding to FOIA requests – some of which is left over from the previous administration, but a better approach is to include in the President’s budget a more robust FOIA office with increased full time staff. This commitment by the President to his Executive Order would be appreciated by the citizens of the nation.

Sincerely,
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